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11 Telephone (602) 248-2900
12 Respondent's counsel

13 **BEFORE THE DISCIPLINARY COMMISSION**
14 **OF THE SUPREME COURT OF ARIZONA**

15 **IN THE MATTER OF A MEMBER OF**
16 **THE STATE BAR OF ARIZONA**

17 **G. DAVID DeLOZIER,**
18 **Bar No. 005237**

19 **Respondent.**

20 File No. 01-2071

21 **TENDERS OF ADMISSIONS**
22 **AND AGREEMENT FOR**
23 **DISCIPLINE BY CONSENT**

24 (Assigned to Hearing Officer
25 7Y, Patricia E. Nolan)

26 This agreement is entered into between the State Bar of Arizona and
27 respondent G. David DeLozier, who is represented by Donald M. Peters, and is
28 submitted pursuant to Rule 56(a), Ariz.R. S. Ct. and the guidelines for discipline
29 by consent issued by the Disciplinary Commission of the Supreme Court of
30 Arizona. Respondent's admissions to the charges are being tendered in exchange
31 for the form of discipline stated herein, subject to review and acceptance by the
32 Disciplinary Commission.

1 Respondent failed to safeguard client funds on deposit in his trust account
2 and failed to maintain his trust account in accordance with the Rules of
3 Professional Conduct. Respondent will receive a censure for his conduct and be
4 placed on one year probation.
5

6 This agreement serves the purposes of discipline in that it protects the
7 public and will deter other lawyers from engaging in similar misconduct.
8 Restitution is not applicable in this matter. Respondent shall pay all costs and
9 expenses incurred in these discipline matters. The Joint Memorandum in Support
10 of Agreement by Consent is filed contemporaneously herewith.
11

12 FACTS

- 13 1. Respondent was admitted to practice law in Arizona on April 22, 1978.
- 14 2. A formal complaint was filed on August 1, 2003. A hearing has not been held.
- 15 3. On October 22, 2001, the State Bar received a notice from Bank One advising
16 that on October 15, 2001, Respondent's client trust account was overdrawn. A
17 check in the amount of \$3,305.60 attempted to pay against the account when
18 the balance in the account was only \$955.72. An overdraft fee of \$25.00 was
19 assessed, making the total negative balance in Respondent's trust account
20 \$2,374.88.
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- 1 4. On October 26, 2001, the State Bar received a second notice from Bank One
2 advising that on October 17, 2001, Respondent's trust account was overdrawn
3 by \$4,733.84.
4
- 5 5. Respondent was asked to provide the State Bar with copies of his trust account
6 records, which Respondent provided.
- 7 6. A review of the trust account records revealed the following:
8
 - 9 a Respondent's beginning balance in the trust account as of January 1, 2001,
10 was \$22,599.18 when the client ledgers indicated that there should have
11 been a balance of \$41,346.00 in the account.
 - 12 b On several occasions Respondent drew disbursements from the trust
13 account prior to the offsetting deposit being credited to the account.
 - 14 c From January of 1999 through October of 2000, there were numerous
15 transactions processed through Respondent's trust account referenced- as
16 "Eddy Engel Trust". \$10,000 was deposited into his IOLTA account for the
17 Eddy Engle Trust. Subsequently, Respondent disbursed funds to pay
18 various expenses, his fees, and also to the Eddy Engel Trust. By June 1,
19 1999 the \$10,000 in Respondent's IOLTA account was exhausted; however,
20 Respondent continued to disburse funds on behalf of the Eddy Engel Trust
21 from his IOLTA, when the Eddy Engel Trust funds had been depleted. The
22 disbursements continued until October 4, 2000 with the ending balance in
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24
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1 the Engel account being negative \$25,147.53. If this matter were to go to
2 hearing, Respondent would testify that he continued to draw disbursements
3 from the trust account for Engel after the \$10,000 had been depleted, as he
4 believed there were positive client balances in his trust account that
5 represented earned fees not transferred from the account. Respondent
6 would also testify that these earned client fees were used to offset the
7 negative client balances in the trust account. For purposes of this consent
8 agreement, the State Bar does not dispute this assertion.
9

11 d Respondent deposited \$23,758.45 of his personal funds that he obtained
12 from a judgment in his IOLTA account, thereby failing to keep his funds
13 separate from that of his clients' funds.
14

15 e Respondent conducted non-client related transactions from his trust account.

16 f Respondent failed to maintain complete trust account records for a period of
17 five years.
18

19 g Respondent failed to perform monthly account reconciliations.

20 h Respondent failed to confirm that funds were on deposit in his trust account
21 for clients prior to drawing offsetting disbursements.
22

23 i Respondent failed to only disburse from his trust account with pre-
24 numbered checks.
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CONDITIONAL ADMISSIONS

Respondent conditionally admits that his conduct as described above violated Rule 42, Ariz.R.S.Ct., specifically, ER 1.15 and Rules 43 and 44.

SANCTION

Respondent and the State Bar agree that on the basis of the conditional admissions contained herein, the appropriate disciplinary sanction is as follows:

1. Respondent shall receive a censure for violating Rule 42 Ariz. R. S. Ct., specifically ER 1.15, and Rules 43 and 44.
2. Respondent shall be placed on probation for a period of one year. Respondent shall contact Leigh Ann Mauger, State Bar staff investigator, within 30 days of the judgment and order to arrange for a consultation regarding Respondent's trust account. Respondent will enter into a memorandum of understanding with the State Bar that will incorporate the recommendations made by Ms. Mauger. The probation period will begin to run when all parties have signed the memorandum of understanding.
3. In the event the State Bar receives information that Respondent has failed to comply with any of the foregoing conditions, bar counsel shall file with the hearing officer a notice of non-compliance, pursuant to Rule 51(j), Ariz.R.S.Ct. The hearing officer shall conduct a hearing at the earliest practicable date, but in no event later than thirty days after the receipt of

1 said notice, to determine whether a condition of probation has been
2 breached and, if so, to recommend an appropriate sanction therefore.

3
4 4. Respondent shall be assessed the costs and expenses incurred in these
5 disciplinary matters, pursuant to Rule 52(a)(8), Ariz. R. S. Ct. A statement
6 of costs and expenses is attached hereto (Exhibit A).

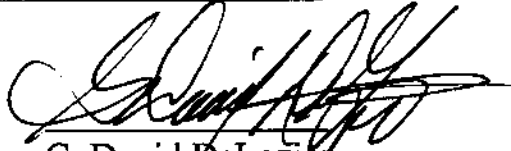
7 Respondent, by entering into this agreement, waives his right to a formal
8 disciplinary hearing that he would otherwise be entitled to pursuant to Rule
9 53(c)6, Ariz.R.S.Ct., and the right to testify or present witnesses on his behalf at a
10 hearing. Respondent further waives all motions, defenses, objections, or requests
11 which he has made or raised, or could assert hereafter, if the conditional
12 admissions and stated form of discipline are approved. Respondent does not have
13 the assistance of counsel in these proceedings. Respondent acknowledges that he
14 has read this agreement and received a copy of it.

15
16
17 This tender of admissions and agreement for discipline by consent will be
18 submitted to the Disciplinary Commission for approval. Respondent realizes that
19 the Commission may request his presence at a hearing for presentation of
20 evidence and/or oral argument in support of this agreement. He further recognizes
21 that the Commission may recommend rejection of this agreement, and that the
22 Arizona Supreme Court may accept or reject the Commission's recommendation.
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1 If the Arizona Supreme Court or the Disciplinary Commission rejects this
2 agreement, Respondent's conditional admissions are withdrawn.


3 **This agreement, with conditional admissions, is submitted freely and**
4 **voluntarily and not under coercion or intimidation. I am aware of the Rules**
5 **of the Supreme Court with respect to discipline and reinstatement.**

6 DATED this 21st day of November, 2003.

7
8 
9 G. David DeLozier
10 Respondent


11 DATED this 21st day of November, 2003.

12 **MILLER, LASOTA & PETERS, LLC**

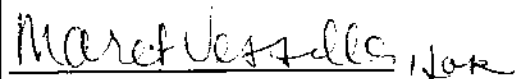
13
14 
15 Donald M. Peters
16 Respondent's counsel

17 DATED this 24th day of November, 2003.

18 **STATE BAR OF ARIZONA**

19 
20 Shauna R. Miller
21 Senior Bar Counsel

22 Approved as to form and content:

23
24 
25 Robert Van Wyck
Chief Bar Counsel

1
2 Original filed this 24 day
3 of November, 2003, with the
4 Disciplinary Clerk's Office of the
5 Supreme Court of Arizona

6 Copy of the foregoing hand-delivered
7 this 24 day of November 2003, to:

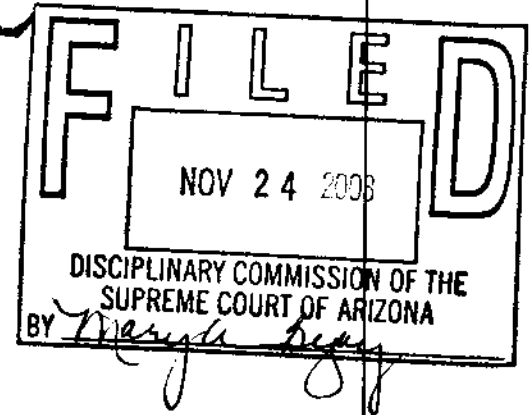
8 Lawyer Regulation Records Manager
9 111 West Monroe St., Suite 1800
Phoenix, AZ 85003

10 Copy of the foregoing mailed
11 this 24 day of November 2003 to:

12 Patricia A. Nolan
13 2702 N. 3rd Street, Suite 3000
14 Phoenix, AZ 85004
Hearing Officer 7Y

15 Donald M. Peters
16 *Miller, LaSota & Peters, LLC*
17 5225 N. Central Avenue, Suite 235
18 Phoenix, AZ 85012-1452
Respondent's counsel

19 by: 
20 SRM/



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20 File No. 01-2071

21 **JOINT MEMORANDUM IN**
22 **SUPPORT OF AGREEMENT**
23 **BY CONSENT**

24 (Assigned to Hearing Officer 7Y,
25 Patricia E. Nolan)

26 The State Bar of Arizona and respondent G. David DeLozier, who is
27 represented by Donald M. Peters, hereby submit their Joint Memorandum in
28 Support of the Agreement for Discipline by Consent. Respondent failed to
29 safeguard client funds on deposit in his trust account and failed to maintain his
30 trust account in accordance with the Rules of Professional Conduct. Respondent
31 will receive a censure for his conduct and be placed on one year probation. This
32 agreement serves the purposes of discipline in that it protects the public and will
33 deter other lawyers from engaging in similar misconduct. Restitution is not

1 applicable in this matter. Respondent shall pay all costs and expenses incurred in
2 these discipline matters. The Tender of Admission and Agreement for Discipline
3 by Consent is filed contemporaneously herewith.
4

5 In arriving at the agreed upon sanctions, consideration was given to the
6 ABA Standards for Imposing Lawyer Sanctions ("ABA Standards"), and Arizona
7 case law.
8

9 ABA STANDARDS

10 The ABA Standards are designed to promote consistency in the imposition of
11 sanctions by identifying relevant factors that courts should consider and then
12 applying these factors to situations where lawyers have engaged in various types of
13 misconduct. ABA Standard 1.3, Commentary.
14

15 Consideration was given to ABA Standard 4.13. Briefly, censure is generally
16 appropriate when a lawyer is negligent in dealing with client property and causes
17 injury or potential injury to a client.
18

19 In this matter, Respondent had earned the clients funds that were in trust,
20 but never transferred those funds to his operating account. Instead, he treated the
21 funds as fully earned and used them for other purposes. Because of this practice,
22 Respondent's records show positive trust balances for some clients who really did
23 not have a positive balance. Attached as Exhibit A is Respondent's explanation of
24 what occurred along with supporting data to show that Respondent had earned the
25

1 funds in his trust account. No clients have complained about Respondent's
2 conduct nor can the State Bar determine any clients were harmed Respondent's
3 conduct. In determining an appropriate sanction, both the Court and the
4 Commission consider the duty violated, the lawyer's mental state, the actual or
5 potential injury caused by the misconduct, and the existence of aggravating and
6 mitigating factors. *Matter of Tarletz*, 163 Ariz. 548, 789 P.2d 1049 (1990); ABA
7 Standard 3.0. Although Respondent violated his duty to his clients, it was not
8 intentional. Rather, Respondent's conduct was negligent and no clients were
9 harmed by Respondent's failure to properly maintain his client trust account.
10
11

12 In deciding what sanction to impose the following aggravating and
13 mitigating circumstances should be considered.
14

15 **In aggravation:**

16 Standard 9.22 (a) prior disciplinary offenses; in file number 00-1963,
17 Respondent was given an informal reprimand by order filed on February 23,
18 2001, for violations of Rule 41(g), Ariz.R.S.Ct. and ER 8.4(d).
19

20 Standard 9.22 (i) substantial experience in the practice of law; Respondent has
21 been a lawyer in Arizona for over 25 years.
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1 **In mitigation:**

2 Standard 9.32 (b) absence of a dishonest or selfish motive. Respondent's
3
4 conduct was negligent. There is no evidence indicating that he intended to
5 misappropriate clients' funds and no evidence that any clients were harmed.

6 Standard 9.32 (e) full and free disclosure to a disciplinary board or cooperative
7 attitude toward proceedings. Respondent cooperated with the State Bar's
8 investigation. In his Answer to the State Bar's complaint, Responded freely
9 admitted his misconduct.

11 Standard 9.32 (j) interim rehabilitation. After the State Bar began its
12 investigation, Respondent purchased and installed adequate accounting software
13 on the recommendation of the State Bar. Respondent also retained an outside
14 accountant who reconciled his trust account records back to January 1, 1998, and
15 assisted in producing the information requested by the State Bar. Outside
16 accountants have been reconciling Respondent's trust account regularly since late
17 2001. Without having been asked to do so, Respondent took the State Bar's
18 course on trust account management. There have been no problems with
19 Respondent's trust account since these remedial measures were taken.

22
23 In addition, two years have passed since the State Bar first discovered the
24 problems with Respondent's trust account. Since that time, Respondent's trust
25

1 account has been under review by the State Bar. Respondent has therefore been
2 subject to what amounted to informal probation for two years.

3 PROPORTIONALITY ANALYSIS

4
5 Sanctions against lawyers must have internal consistency to maintain an
6 effective and enforceable system; therefore, the court looks to cases that are
7 factually similar to the case before it. *In re Pappas*, 159 Ariz. 516, 526, 768 P.2d
8 1161, 1171, (1988).

9
10 In terms of proportionality, the following cases are instructive: In *Matter of*
11 *Leiber*, SB-01-0122-D (July 2, 2001), Leiber was charged with failing to comply
12 with trust account guidelines and with causing a check in the amount of \$8,000.00
13 to be returned for insufficient funds because the attorney's trust account only had
14 a balance of \$5,859.00. Leiber's client, a long time friend and lawyer, had agreed
15 to deposit \$8,000.00 in Leiber's California branch of his trust account but only
16 deposited \$5,000.00. Leiber also commingled funds over a period of years by
17 placing earned fees and other personal funds into his trust account. The Arizona
18 Supreme Court accepted the Disciplinary Commission's recommendation for
19 censure and one year probation.

20
21
22 In *Matter of Randall*, SB- 02-0146-D (November 2002), Randall failed to
23 conduct a proper monthly reconciliation. He used numerous counter checks to
24 withdraw money from his trust account instead of using pre-numbered checks as
25

1 required by the Guidelines. He also deposited and commingled his own separate
2 funds, including earned fees, with client funds in his trust account. Randall failed
3 to maintain adequate funds in the trust account resulting in the account being
4 overdrawn on two occasions. He failed to establish adequate internal controls to
5 safeguard client funds. The hearing officer recommended that Randall receive a
6 censure for his misconduct, which was accepted by the Disciplinary Commission
7 and the Arizona Supreme Court. Randall was not placed on probation,
8 presumably because he was no longer working as a sole practitioner and was
9 employed by a medium size firm where he was not in charge of any accounting
10 procedures.
11
12

13
14 In *Matter of Hall*, SB-02-0122-D (September 2002), Hall advance funds
15 from his firm's operating account and placed those funds into the trust account to
16 cover client costs. The State Bar received four overdraft notices from Bank One.
17 Subsequently, records obtained by the State Bar revealed that Hall's trust account
18 records were deficient for individual client accounts. The trust account records
19 reflected negative balances during this period for a total of twelve clients. Hall
20 failed to adequately monitor his clients' funds, which were on deposit in his trust
21 account and as a result of this failure, overdrafts occurred on the account. He
22 failed to establish sufficient internal controls in order to properly monitor his
23 client's funds. Hall was censured and placed on one-year probation by a hearing
24
25

1 officer, which was accepted by the Disciplinary Commission and the Arizona
2 Supreme Court

3 In *Matter of Inserra*, SB-02-0144-D (October 2002), Inserra failed to keep
4 his earned fees separate from that of his client funds held in the trust account,
5 failed to transfer fees from the trust account when earned, and commingled his
6 own funds with those of his clients. Inserra also failed to maintain complete trust
7 account records for a period of five years, failed to exercise due professional care
8 in the maintenance of his trust account, failed to only disburse from his trust
9 account with pre-numbered checks, and failed to conduct a monthly reconciliation
10 of his trust account. Inserra and the State Bar submitted a consent agreement,
11 agreeing that a censure, two years probation and costs were the appropriate
12 sanction. The Disciplinary Commission unanimously recommended accepting the
13 agreement and the Arizona Supreme Court accepted the recommendation of the
14 Disciplinary Commission without discretionary review.
15

16 In this case, Respondent failed to promptly remove earned fees from the
17 trust account. Respondent failed to keep his funds separate from his clients'
18 funds. Respondent failed to maintain complete trust account records and to
19 exercise due professional care. Respondent failed to maintain complete trust
20 account records for a period of five years, failed to exercise due professional care
21 in the maintenance of his client trust account, failed to record all transactions to
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1 the trust account promptly and completely, failed to perform monthly account
2 reconciliation, failed to confirm that funds were on deposit in his trust account for
3 clients prior to drawing offsetting disbursements and failed to only disburse from
4 his trust account with pre-numbered checks.
5

6 Based on the aforementioned, the State Bar and Respondent agree that
7 Respondent's conduct in this matter warrants a censure, one year probation, and
8 the costs and expenses incurred in these disciplinary matters and respectfully
9 request the imposition of same herein.
10

11 **CONCLUSION**


12 Recognizing that it is the prerogative of the Disciplinary Commission to
13 determine the appropriate sanction, it is nevertheless the belief of the State Bar
14 and Respondent that the objectives of discipline will be met by the imposition of a
15 censure, one-year probation, and the costs and expenses of these proceedings.
16

17 DATED this 21st day of November, 2003.
18

19 
20 G. David DeLozier
21 Respondent


22 DATED this 21st day of November, 2003.

23 **MILLER, LASOTA & PETERS, LLC**

24 
25 Donald M. Peters
Respondent's counsel

1 DATED this 24th day of November, 2003.

2 STATE BAR OF ARIZONA

3 
4 Shauna R. Miller
5 Senior Bar Counsel

6
7 Approved as to form and content:

8 Robert Van Wyck *for*
9 Robert Van Wyck
10 Chief Bar Counsel

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5 Respondent's counsel

6 by: 

7 SRM/
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